IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

Civil Revision No.3208 of 1993

Date of Decision: 15.11.2006

Jaswinder Singh and others

Petitioners

versus

Jit Singh and others

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

Present: Shri R.K.Aggarwal, Advocate for the petitioners

Jasbir Singh, J. (Oral)

This revision petition has been filed against order dated 28.7.1993, vide which, application of the petitioners, to amend their written statement, was dismissed.

It is not in dispute that respondent No.1, by claiming himself as owner of the land, in dispute, filed a suit for possession against the petitioners and respondent Nos.2 to 8. In that suit, after looking into pleadings of the parties, following issues were framed:-

1. *Whether Jit Singh plaintiff is the owner of the land in dispute? OPP*
2. *Whether the land in lieu of which the land in dispute was allotted during consolidation was allotted in lieu of land in chak No.304. Sheron Kurd, Toba Tek Singh, District Layipur now in Pakistan? OPP.*

3. *Whether Jit Singh defendant was allotted land in Malianwala in lieu of land left by him in Pakistan and whether the suit land was allotted to him in lieu of that land? OPD.*
4. *Which of the two Jit Singh, i.e. the plaintiff and defendant was the real allottee of the land in lieu of which the suit and was allotted during consolidation of holding in Mallanwala, Onus on parties.*
5. *Whether the plaintiff has got no cause of action? OPD*
6. *Whether the suit of the plaintiff is barred by limitation? OPD*
7. *Whether defendant No.3 to 5 have become owner by adverse possession? OPD*
8. *Whether the two sale deed dated 9.7.79 by Jit Singh defendant in favour of defendant No.3 to 5 are binding on Jit Singh plaintiff? OPD*
9. *Whether the two sale deeds dated 9.7.79 are void and inoperative against the rights of the plaintiff for reasons given in para No.9 of the plaintiff? OPP*
10. *Whether defendant No.3 to 5 are protected by previsions of section 41 of the T.P.Act they being bonafide purchasers for consideration and without notice of rights? If any, of the plaintiff? OPD*
11. *What is the effect of the inter se previous litigation between the defendants 1 to 5 on the rights, if any, of the plaintiff? OPD.*

After contest, suit was decreed and it was held that respondent No.1/ the plaintiff is the owner and is entitled to get possession of the property, in dispute. Petitioners went in appeal. During pendency of the same, they moved one application before the appellate Court with a prayer to amend their written statement, which was dismissed.

Record reveals that in the written statement, they intended to take a plea that respondent No.1/ the plaintiff was an imposter and actually

he is one Kundan Singh son of Sawan Singh, brother of respondent No.3. Application was dismissed, by opining that the plea that respondent No.1/ the plaintiff is not a real person, had already been taken by the petitioners in their written statement.

Counsel for the petitioners states that the Court below has erred while opining as mentioned above. No such plea was taken in their written statement.

At the time of arguments, the Court has seen written statement filed by respondent No.2 and also by the petitioners. In para No.1 (preliminary objections), it has specifically been stated that the plaintiff Jit Singh has no locus standi to file the suit. He is son of Bagga Singh son of Harnam Singh. It has further been said that respondent No.2/ defendant No.1 is the real Jit Singh son of Ganga Singh alias Harnam Singh. In para No.1 on merits, it has been specifically said that the plaintiff is not real Jit Singh. The plaintiff is related to Jagir Singh defendant. Similarly, the petitioners/ defendant Nos.3 to 5, in their written statement, in para 1 of preliminary objections, have specifically stated that the plaintiff is not the son of Bagga Singh son of Harnam Singh. Jit Singh defendant No.1 is real Jit Singh son of Baga Singh son of Ganga Singh alias Harnam Singh. In para No.1, on merits, it has specifically been stated that "defendants do not know the plaintiff. He is unknown and is brought by Jagir Singh defendant only to file this false suit." In this very para, it has further been stated that "the plaintiff is not a real Jit Singh. He is not son of Bagga Singh son of Harnam Singh. The plaintiff is related to defendant Jit Singh". In para No.1 of the plaint, respondent No.1 has specifically stated that he is owner of the property, in dispute. Judgment and decree, passed earlier, inter-se the petitioners and defendant No.2, are not binding upon him and he being the

owner, is entitled to get possession and mesne profit for use and occupation of the property, in dispute. In reply to para, it has been stated that the decrees are valid and binding on the parties and further that the plaintiff is not entitled to anything as 'he is the bogus person'. Above mentioned plea taken by the petitioners and respondent No.2 in written statement clearly indicates that they had already taken a plea that the plaintiff was an impersonator and not real Jit Singh. If that is so, their application, to amend the written statement, has rightly been dismissed. No case is made out for interference.

Dismissed.

November 15, 2006 **(Jasbir Singh)**
gk **Judge**